REMARKS:

Claims 1-59 and 69-80 have been examined. Claims 49-52, 54, and 59 have been amended therein. Claims 1-48, 53, and 69-80 have been cancelled without prejudice or disclaimer, rendering each and every objection and/or rejection against each cancelled claim moot. Claims 81-93 have been added. Consequently, claims 49-52, 54-59, and 81-93 are now pending.

35 U.S.C. §101 Rejections

As detailed above, the newly added amendments have overcome and/or rendered moot each and every 101 rejection raised in the Office Action with respect to now pending claims.

35 U.S.C. §112, 2ⁿᵈ paragraph Rejections

As detailed above, Applicants simply note that the specific 112 rejections have been overcome since claims against which the rejections were raised are now cancelled without prejudice or disclaimer. However, to expedite the examination of the presently pending claims, Applicants responds to the Office Action's statement on page 7 that "[t]he specification merely notes in paragraph 38 which also references Figure 1, for example that the system includes 'general rules' however there is not mention of what these rules could be and no disclosure as to the details f the program 115 noted or any specific algorithm or software as to how to determine a plan based on weight." Applicants respectfully disagree. For example, Applicants simply noted that exemplary portions from the original specification provided below to support the newly added limitations in claims 49, 59, 81 and 82 disclose <u>specific</u> rules and provide <u>concrete</u> examples (see Table 2 and "U.S. Pat. Nos. 6,040,531 and 6,436,036 to Miller-Kovach et al. for further discussion of POINTS") of how a person can control body weight "based on weight."

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The Office Action rejected claims 49-50, 52, and 54-59 under 35 U.S.C. §102(e) as being anticipated by U.S. Pub. 2002/0062069 ("Mault-069").

Initially, it is noted that Applicant does <u>not</u> necessarily concur with the Office Action's analysis of these claims in view of applicable laws and regulations. Nevertheless, in order to expedite prosecution of the application, the now amended independent claim 49 more clearly recites the distinct features of the presently claimed invention. Particularly, for example, the independent claim 49, now recites, *inter alia*, the following:

- "<u>providing</u>, by a computer system, based at least in part on the initial profile associated with the user, <u>at least one first dietary recommendation, wherein the at least one first dietary recommendation is based at least in part on the initial weight of the user and comprising, for at least one first food, a first quantity, a first type, or a combination thereof, which is recommended to control body weight of the user;</u>"

- "<u>automatically updating, by a computer system, the dataset in accordance with the received updated data such that, based in part on the updated weight of the user, the at least one first dietary recommendation personalized by the user is automatically updated in the first quantity, the first type, or the combination thereof;</u>

- <u>automatically altering, by a computer system, at least one second dietary recommendation to be provided to the user, wherein the at least one second dietary recommendation is based at least in part on the updated dataset and comprising, for at least one second food, a second quantity, a second type, or a combination thereof, which is recommended to control body weight of the user;</u>"
(emphasis added.)

The support for the above detailed amendments can be found in the originally filed application, for example, as follows:

[0093] <u>The weight control software provider 105 (FIG. 1) may further request a desired meal plan type 818. The desired meal plan types may include regular, higher-</u>

carbohydrate, higher-protein, and vegetarian. Each of these meal plan types has an associated percentage of carbohydrates, protein, fat, and fruits and vegetables that the user 110 is prescribed to eat in the daily food consumption regiment. TABLE 2 provides an exemplary food consumption daily regiment as prescribed by the desired meal plan types.

TABLE 2

Desired Meal Plan Types

Type of Plan	Average Nutrient Mix Per Day			Servings per day
	Carbs	Protein	Fat	Fruit and Veg
Regular	55%	20%	25%	5+
Higher Carb.	60%	20%	20%	5+
Higher Protein	50%	25%	25%	5+
Vegetarian	55%	20%	25%	5+

[0104] Four functional elements 904a-904d (collectively 904) may be selected in working with the journal 304. A food consumption section 906 presents meals for each part of the day. For example, the morning portion 908 shows a meal having one medium pear, one cup of artificially sweetened yogurt, one-half cup of General Mills Whole Grain Total.TM., and six average almonds. Each food item 910 has an associated food value 912 as determined by the general rules of the illustrated weight control program 115, for example. However, foods may be categorized in any other way, such as calories or grades, based on the general rules of the weight control program 115 (FIG. 1). In one embodiment, the food values may be determined and tallied in terms of "POINTS" as specified by a particular weight control program 115. POINTS is a registered trademark of Weight Watchers International, Inc. See, U.S. Pat. Nos. 6,040,531 and 6,436,036 to Miller-Kovach et al. for further discussion of POINTS. A subtotal and daily total for each meal is provided in the food consumption section 906. The user 110 is able to tailor the foods for the day by selecting and unselecting food items 910 in the food consumption section 906 based on the general rules of the weight control program 115.

[0110] FIG. 12 is yet another exemplary web page 900c of the journal 304 of FIG. 9. The food consumption section 906 illustrates the flexibility of the journal 304 according to the principles of the present invention. ...Accordingly, the foods may be entered and tallied to notify the user 110 whether the amount of food consumed is within the recommended consumption range 914 according to the general rules of the weight control program 115 (FIG. 1). In one embodiment, the recommended consumption range 914 may be a function of calories. Alternatively and/or additionally, the recommended consumption range 914 may be a function of fat and fiber. Upon the food and exercises being consumed and performed, respectively, the journal 304 stores the items for future review.

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[0117] If the user 110 does not want to use a meal provided by the meal planner 306, the user 110 may replace this meal with an alternative meal generated by the meal planner 306 and consistent with the general rules of the weight control program 115. The user 110 may input any meal generated by the meal planner 306 into the journal 304 and save the meal in the favorites category of the user 110. Furthermore, as the weight tracker 310 is updated by the updated weight 322 as input by the user 110, the meal planner 306 automatically alters the dietary recommendations of the weight control program 115 (FIG. 1) based on the updated weight 322 in accordance with the general rules of the weight control program 115. By altering the dietary recommendations of the weight control program 115, the recommended quantity and type of food is altered such that both the journal 304 settings and the meals provided to the user 110 via the meal planner 306 are automatically updated. (emphasis added)

Further, the support for the newly added limitations recited by dependent claims 59, 81 and 82, which each, directly or indirectly, depend on claim 49, can be found in the originally filed application, for example, as follows:

[0065] The recipe builder 502 is a tool that allows the user 110 to generate user-defined foods and recipes that may be stored in the foods database 403, entered into the journal 304, and saved in the favorites generator 414 for later use. Additionally, the recipe builder 502 may be utilized to share the recipe with others utilizing the weight control software system using, for example, public forums such as chat rooms, message boards, bulletin boards, or similar locations or activities where users 110 may communicate with one another (community). The recipe builder 502 provides the user 110 with an easy way to add and search for ingredients of a recipe. Once the ingredients are entered by the user 110, the recipe builder 502 is able to apply the general rules of the weight control program to provide the user 110 with information and guidance on what quantity of such food or meal is appropriate to accomplish the weight control goals of the user 110.

[0158] Because the weight control software system operates, at least in part, on the server 202, the opportunity for the users 110 to provide their personal information in a public forum may be accessed by others on the network 216. Additionally, the personal information may be applied to other community shared information, such as recipes. (emphasis added)

On page 19, with respect to the previously pending recitation of claim 49, the Office

Action states that Mault-069 discloses "-fig.6 - start weight entered into system; target weight

linked to diet planning in goal modules, goals can be revised; figs. 7A-7B, 8A-8F - personal

profile data includes name; paragraph 58 - diet log database." Further, on page 20, with respect

to the previously pending recitation of claim 53, the Office Action states that Mault-069 discloses "updating is performed automatically" by disclosing "fig.6 - start weight entered into system; target weight linked to diet planning in goal modules, goal can be revised." In addition, on page 3, in further explaining the reasons for its rejections, the Office Action states that "the Mault 069 reference in Figure 6 notes that current balances of weight and daily caloric data can be revised as target weight and diet planning information changes. Mault 069 also teaches in figures 8a, 8b, 8c, 8d, 8e, and 8f and paragraph 57, that entered target weight information affects nutrient targets which include calories. Paragraph 51 notes that the health management software provides for the 'Entry of food consumption through a food log with a search capability; entry of activity information combined with a search tool (alternatively using data from an activity sensor); feedback to the user regarding the caloric balance and time dependent logging of body measurements such as resting metabolism, body weight, and body fat percentage; reporting on body measurement trends using graphical display capabilities of the computing device or other device such as an interactive television; and reporting on the nutritional balance of food intake.' …When daily weight entry changes so is the value of caloric balance. The Mault 069 reference in paragraph 54 also teaches that the system provides future food alternatives to help with diet planning. Paragraph 99 notes that the user can use the meal log to plan their daily meals." For the following reasons, Applicants respectfully disagree with the Office Action that the above identified disclosure of Mault-069 discloses the presently amended limitations of claim 49.

Specifically, Mault-069 is directed to "health management for a person is provided, in which the person's resting metabolic rate (RMR) is determined at intervals using an indirect calorimeter …[and then] implements a balance log weight management program that correlates RMR with caloric intake and activity level to determine the person's caloric expenditure and thus

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the person's caloric balance." Mault-069's Abstract. (emphasis added.) Further, with respect to

its Fig. 6, Mault-069 discloses:

[0051] Health management software running on computing device 52 receives the metabolic rate data at intervals, caloric intake data relating to diet, and physical activity level data. The software provides goals and feedback to the user in relation to weight goals, which are modified by changing values in the metabolic rate of the user. Diet logging software and activity sensors are known in the art. However, conventional weight control methods do not compensate for changes in the metabolic rate of the user over time. ***

[0052] Software running on electronic device 52 preferably enables the device to function as a caloric intake calculator (allowing the user to enter data such as food item identity, indicative of food items (including beverages) consumed); a caloric expenditure calculator (allowing caloric expenditure to be determined from data related to physical activity of the user); and allows the device to receive RMR data related to the person at intervals. ***

[0053] FIG. 6 shows a schematic illustration of one embodiment of health management software also referred to as a balance log, which may run on the computing device 52. ... The user determines their resting metabolic rate using an indirect calorimeter, preferably the Gas Exchange Monitor disclosed in U.S. Ser. No. 09/630,398. The user also enters their lifestyle, sleep time, and typical exercise level into the device. The software then prepares an estimate or preview of the caloric balance for the person, indicating the caloric expenditure through RMR, caloric expenditure through activity, and caloric intake allowable by consumption. The user may adjust their intended activity level during the course of the weight loss program. The user then selects a customized diet using software on the computing device which allows a preferred distribution of carbohydrate, fat, and protein to be consumed.

[0054] During the course of a weight control program, the user enters foods consumed into the software. ...The software may provide advice on future diet planning, for example suggesting lists of alternative foods which assist the user in achieving a weight loss goal. Activity levels may also be entered through a menu system. The computing device 52 preferably displays information related to the user's caloric and nutritional intakes, and displays trends, caloric balance, and other information relation to goals of the weight loss program.

[0055] The computing device then allows the user to view a breakdown of their daily caloric intake and intake of various food groups, vitamins, and minerals, which may be derived from current medical knowledge of healthy diets. After the setup is complete, the user enters diet information through a menu system. The user may select between various food groups to enter the identity of foods consumed. Activity level data is also supplied to the computing device either through user entry or information received from activity sensors. The consumption information and activity levels may then be transferred to a

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remote computer system. The device may be used as a progress calculator, by which the progress made towards target goals can be compared with initial projections.

[0099] If the user 102 selects a meal log option, the methodology advances to block 230 and a meal log page 130a is displayed on the television screen 106, as shown in FIGS. 22-24. For example, the meal log option provides an opportunity for the user 102 to select meals for a predetermined time period, such as dinner, as shown at 136. The user 102 can select a meal entre from a predetermined list of entrees maintained in the database 126, and determine whether to prepare and eat the meal, depending on whether the meal fits their goals for the day. For example, the user 102 can use the meal log to plan their daily meals to ensure that the meals they consume correspond with their weight management goals. The user 102 selects a particular mealtime, such as dinner, and a dinner entre, and is provided with information such as nutritional value of the selected meal, includes caloric, fat and vitamin analysis as shown at 138. The user 102 is provided with other options, such as to search for a food from a page 130b listing a predetermined list of foods organized by food group, as shown in FIG. 23 at 140. The user 102 can add the selected food to the meal log, modify a meal log entre or delete an existing meal log entre. *** (emphasis added.)

Consequently, as detailed above, to summarize, Mault-069 specifically discloses the following about its "health management software":

- Mault-069's software is based on a relationship between a person's "metabolic rate" and consumed calories and, therefore, "estimate[s] or preview[s] of the caloric balance for the person, indicating [only 3 things]":

   (1) the caloric expenditure through RMR ["resting metabolic rate"] [(by "allow[ing] the device to receive RMR data related to the person at intervals")],

   (2) caloric expenditure through activity [by "allowing caloric expenditure to be determined from data related to physical activity of the user)], and

   (3) caloric intake allowable by consumption [by ("allowing the user to enter data such as food item identity, indicative of food items consumed")]";

- aside from calculating "the caloric balance," Mault-069 requires from the user to manually modify his or her choices to fit any changes in his or her suggested "

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caloric balance" -- i.e., Mault-069 ubiquitously discloses that the user, himself or herself, must, *inter alia*, "select[] a customized diet" by "select[ing] meals," "**determin[ing]** whether …the meal fits [his or her] goals," "add[ing] the selected food to the meal log," and "modif[ing] a meal log entre";

- "[when] the user **enters** foods consumed into the software" it "**suggest**[s] lists of alternative foods" **based on** the calculated "**caloric** balance";

- while Mault-069 discloses that users can track "time dependent logging of body measurements [including] body weight, and body fat percentage," Mault-069 expressly discloses that the "feedback to the user regarding the caloric balance," is **solely** based on "resting metabolism rate."

In contrast to Mault-069 disclosure of the "**caloric** balance" dependency on "resting metabolic rate," as detailed above, the Applicants' claim 49 requires *"providing … dietary recommendation[s] … based at least in part on … **weight** of the user."* Moreover, while Mault-069 discloses calculating a total "**caloric** balance" which Mault-069 then requires its user, by himself or herself, to **manually** "select" and "modify" a course of "action" (e.g., meals) that the user must also determine by himself or herself to be "fit" his or her calculated "**caloric** balance"; Applicants' claimed invention instead **helps** the user, by *inter alia*:

- "providing, by a computer system, based at least in part on the initial profile associated with the user, at least one first dietary recommendation, wherein the at least one first dietary recommendation is based at least in part on the initial weight of the user and comprising, for at least one first food, a first quantity, a first type, or a combination thereof, which is recommended to control body weight of the user;"

- "automatically updating, by a computer system, the dataset in accordance with the received updated data such that, based in part on the updated weight of the user,

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> the at least one first dietary recommendation personalized by the user is
> automatically updated in the first quantity, the first type, or the combination
> thereof;
>
> - automatically altering, by a computer system, at least one second dietary
>   recommendation to be provided to the user, wherein the at least one second
>   dietary recommendation is based at least in part on the updated dataset and
>   comprising, for at least one second food, a second quantity, a second type, or a
>   combination thereof, which is recommended to control body weight of the user;"
>
> (emphasis added.)

Further, while, on page 3, the Office Action states that "[a]ccording to the website, http://www.caloriesperhourcom/tutorial_BMR.php the equation to calculate RMR for women is (10 X weight) plus (6.25 X height) — (5 X age) minus 161"; thus asserting that "RMR" can be calculated from "weight," Mault-069 does not disclose the stated "equation" and, instead, as detailed above, specifically discloses that "RMR" is measured by "using <u>an indirect calorimeter</u>, preferably the Gas Exchange Monitor disclosed in U.S. Ser. No. 09/630,398." (emphasis added.) In any way, again, Mault-069 only discloses using "RMR" to calculate the <u>total</u> "**caloric** balance" and thus does not disclose the above identified specific limitations of Applicants' claim 49.

Consequently, Mault-069 respectfully does <u>not</u> disclose at least the above identified newly added limitation of claim 49, and thus does <u>not</u> anticipate claim 49. Moreover, Applicants respectfully submit that the newly added independent claim 83 is <u>not</u> also anticipated by Mault-069 for the same reasons detailed above regarding claim 49.

In addition, as detailed above, the specific rejections against each now cancelled dependent claims are now moot. Lastly, it is noted that each of now pending dependent claims depends (directly or indirectly) from the independent claims 49 and 83. Thus, while various

features recited in these dependent claims may be patentably distinct on their own, in order to expedite prosecution of the application it will simply be noted here that each of these dependent claims is submitted to be patentably distinct for at least the same reasons as the independent claim from which it depends.

Hence, each and every rejection raised in the Office Action has been overcome and/or rendered moot, Applicants respectfully submit that the above-identified application is now in condition for allowance.

Additionally, as detailed above, this Amendment is fully supported by the originally filed application and thus, no new matter has been added. For this reason, the Amendment should be entered.

In view of the foregoing amendments and remarks, Applicants' attorney respectfully requests allowance of now pending claims. If such action cannot be taken, however, the Examiner is cordially invited to place a telephone call to Applicant's attorney to resolve any outstanding issue without the issuance of a further Office Action.

Favorable reconsideration is earnestly solicited.

Respectfully submitted,
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